IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6107 OF 2006

Laxman S. Khandve & Anr. .. Petitioners

Versus

Narayan S. Chavare and Ors. .. Respondents

Mr.Kishor Patil for petitioners

Mr.Milind Deshmukh for respondent Nos. 1 to 7

CORAM : S.C.DHARMADHIKARI, J.

DATE : 14th June 2007.

P.C.

. Heard Mr.Patil for petitioner and Mr.Deshmukh appearing on caveat for respondent Nos. 1 to 7.

2. It appears that after this matter was argued for some time before this Court on 23rd March 2007, learned Advocate for petitioner sought time to take instructions as to whether the petitioner is ready to make available a road for taking Bullock-Cart to the field of respondents as stipulated in the order of the Mamlatdar in Vahivat Case No.2 of 1995 dated 17th June 1996. Time was sought by the petitioner's Advocate to file an affidavit to this effect. Mr.Patil states that no affidavit is filed and his instructions are that the matter be argued on merits.

3. The only contention raised by Mr.Patil in support of this petition is that the order of the Mamlatdar which is sought to be relied upon by respondent - original appellant before the lower appellate court does not specify as to whether the access road is a cart-track road and in any event does not specify its width. In this

behalf, he relied upon the observations of the trial court while deciding the interim application and more particularly para 10 thereof. In his submission, the lower appellate court committed a grave error apparent on the face of record in granting injunction in favour of the respondent - original appellant/ plaintiff in the light of this prima facie findings.

4. Mr.Deshmukh on the other hand relied upon the order passed by the Mamlatdar on 17th June 1996 and the operative part thereof, whereunder the petitioner was directed to provide access/road for respondent original appellant to carry his agricultural crop and equipment. He submits that once such is the nature of direction, by no stretch of imagination a foot-way would suffice, considering that the lands are agricultural lands and there is no access to the respondent’s land by any other mode. The bullock-cart or cart track provided as

an interlocutory measure and that too on a condition by the lower appellate court needs no interference. More so, in the limited powers conferred upon this Court under Article 227 of the Constitution.

5. Having perused the petition and annexures thereto, including the orders passed by the trial court and lower appellate court and that of the Mamlatdar of 17th June 1996, I am satisfied that the prima facie finding recorded by the lower appellate court does not warrant any interference. This is not a couet of further appeal and, therefore, re-appraisal or re-appreciation of any material, even at interlocutory stage is impermissible in law. Finding of fact at prima facie stage based upon materials produced, therefore, merit no interference, more so, when I am satisfied that the prima facie finding is rendered in the backdrop of the order of Mamlatdar so also

considering that the land of respondent is blocked and has no other access but from the petitioner's land. Petitioner does not dispute this fact but only disputes the nature of the access. That for agricultural operations to be done and completed smoothly and properly, bullock cart access is necessary also does not require any detailed arguments. These are tentative and prima facie directions and do not in any manner adversely affect petitioner's case on merits which have to be gone into at the hearing of the suit, which will be decided uninfluenced by the observations of the court below so also of this Court. In the light of the above, no case for interference under Article 227 of Constitution of India is made out. Petition stands summarily dismissed.

(S.C.Dharmadhikari, J)